Now "the clear evidence of Inspector Kay and the other people" on the guilty knowledge of the accused was not "so cogent and convincing that the conclusion is not to be resisted that the jury properly directed, would certainly have arrived at the same conclusion." Had the jury been directed to consider the undisputed evidence that the accused walked into that room with a box of forged notes, and then to consider his explanation, and the fact that he left the room without payment for the notes he had delivered they might have found guilty possession or they might not.

Apart from Boo Bun Chin's evidence, the evidence of guilty knowledge is not overwhelming.

That being so we think the summing up and the speech of counsel for the Crown may well have undermined whatever weight the speech of counsel for the defence may have had, by leading the jury to think that what was required was not so much that a man admittedly not only was an accomplice but an accomplice who had either at his trial or at the accused's trial lied to the Court should be corroborated, but that he should corroborate perfectly honest witnesses on points upon which there was no dispute.

We are of opinion that the jury was not adequately warned about the danger of convicting on the uncorroborated evidence of an accomplice. We are further of opinion that if there was any corroboration of the vital point of guilty knowledge, it was put far too strongly in referring to "the clear evidence" which was not incompatible with the accused's defence.

We have already stated that whatever corroboration there may have been was not so cogent and convincing as to cure the defect to which we have referred in an otherwise admirable summing up.

We therefore allow the appeal and quash the conviction.

Appeal allowed.

Conviction quashed.

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

October 5, 1938.

RE M. P. L. M. MUTHIAH CHETTIAR. *EX PARTE* S. P. N. RAMANATHAN CHETTIAR.

[MALACCA BANKRUPTCY No. 44 of 1938]

Bankruptcy Notice—Bankruptcy Rules 2, 9, 93 and 97.

The copy of a bankruptcy notice for service upon the debtor must be sealed with the seal of the Supreme Court. If it is not sealed with the seal of the Supreme Court the omission is not a mere formal defect, but it renders the service upon the debtor a nullity and being a material defect the Court has no power to waive it.

MOTION.

John Laycock for petitioning creditor.

R. L. Eber for debtor.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

McELWAINE, C.J.—The proceedings on this bankruptcy petition were transferred from Malacca to Singapore by an order of Horne J.

The petition alleges as the act of bankruptcy the failure of M. P. L. M. Muthia Chettiar "to comply with the requirements of a bankruptcy notice duly served on him on 15th June 1938."

The petition is opposed on the ground that a bankruptcy notice was not duly served, because the copy of the notice delivered to M. B. L. M. Muthiah Chettiar by the process server to the Sheriff of the High Court Malacca did not bear the seal of the Supreme Court of the Straits Settlements.

I think it important to set out the process server's affidavit.

> "1. I did on Wednesday the 15th day of June, 1938 at 3.25 p.m. at No. 65 First Cross Street, Malacca, serve M. P. L. M. Muthiah Chettiar with a copy of the Bankruptcy Notice dated the 15th day of June, 1938 by exhibiting the original and delivering a copy thereof to him.
>
> 2. The said M. P. L. M. Muthiah Chettiar was pointed out to me by Tay Peck Lee clerk to Messrs. Allen & Gledhill Solicitors for the Petitioning Creditor.
>
> 3. The sealed copy of the said bankruptcy notice is now produced and shown to me and marked "A."
>
> 4. That I did afterwards on the same day endorse on the sealed copy of the said Bankruptcy Notice the day of the week and month of such service on the said M. P. L. M. Muthiah Chettiar personally."

The sealed notice is a carbon copy signed by the Registrar on 15th June, 1938.

The flaw alleged in these proceedings is that the copy of the bankruptcy notice served on or delivered to M. P. L. M. Muthiah Chettiar did not bear the seal of the Supreme Court of the Straits Settlements but bore instead a rubber stamp (L.S.)

The Deputy Registrar of the High Court at Malacca has in an affidavit set out the Malacca practice as follows:—

> "So far as I am aware the practice with regard to the above has been as follows until quite recently. The Solicitor for the petitioning creditor through his Court clerk (as required by rule 93 of the Bankruptcy Rules) hands over to the Registry clerks four copies of the

Bankruptcy Notice, the original being duly stamped for filing, one copy for sealing, another for service and the remaining copy for transmission to the Official Assignee.

One copy of the Bankruptcy Notice only is sealed by stamping the same with a metal stamp bearing the words "The Seal of the Supreme Court of the Straits Settlements" and the Royal Arms. This copy is exhibited to the affidavit of service and filed in the Registry. The copies for service on the debtor and the Official Assignee are not sealed with the Seal referred to in paragraph 4 of this affidavit but the sealing of the original notice and of the copy for service is done with a rubber stamp bearing (L.S.) as shown in the margin. This is done by a clerk in the Registry after which the original notice and copy for service on the debtor are sent to the Sheriff for service. Another copy is forwarded to the Official Assignee by the Registrar. This has been practice for many years and the same is still being followed."

Bankruptcy rules 2 and 9 direct that all bankruptcy notices issued by the Court shall be sealed with the seal of the Supreme Court.

Rule 93 reads:—

"A creditor desirous that a bankruptcy notice may be issued shall produce to the Registrar an office copy of the judgment on which the notice is founded and file the notice together with a request for issue which shall be in Form No. 4 in the Appendix with such variations as circumstances may require. The creditor shall at the same time lodge with the Registrar two copies of the Bankruptcy Notice to be sealed and issued for service and a copy for transmission to the Official Assignee which copy the Registrar shall forthwith send by post or otherwise to the Official Assignee."

Mr. Laycock argued that the words in r. 93 "two copies of the bankruptcy notice to be sealed and issued for service" do not mean that two copies are to be sealed but that one copy is to be sealed and the other to be served. Even if r. 93 stood by itself I could not read it in this sense.

It seems to me that the rule intends each copy to be sealed and each copy to be issued. The words "for service" do not necessarily mean that two copies are to be actually served. Each copy must be signed by the Registrar and each copy must be sealed. One copy so signed and sealed is served on the debtor and the other is exhibited to the process server's affidavit of service. In this sense both copies are issued for service.

The point is made plain by rr. 97 and 109.

Rule 97:

"A bankruptcy notice shall be served and service thereof shall be proved in the like manner as is by these Rules prescribed for the service of a creditor's petition."

Rule 109:

"A creditor's petition shall be personally served by delivering to the debtor a sealed copy of the filed petition."

So service is to be effected by delivering to the debtor a sealed copy.

Form 6 in the Appendix to the Bankruptcy Rules sets out what is required in an affidavit of service of a bankruptcy notice. I just quote the first paragraph:—

"1. That I did on day, the day of 189 , serve the above-mentioned A.B. with a copy of the above-mentioned notice, duly sealed with the seal of the Court, by delivering the same personally to the said A.B. at (place) before the hour of in the noon."

The process server's affidavit which I have set out naturally differs from the prescribed form.

I have no manner of doubt that the copy served must be sealed with the seal of the Court. It is the seal which gives it its authenticity. There is nothing in the Bankruptcy Rules corresponding to O. IX r. 3 about producing for inspection the original because the copy of the bankruptcy notice to be served is itself an original. Mr. Laycock suggested that the rubber stamp (L.S.) is itself a seal and that its imposition shews intention to seal and he referred to *The Queen* v. *Inhabitants of St. Paul, Convent Garden*, 7 Q.B.D. 232 and *Sprange* v. *Barnard*, 2 Bro. C.C. 585. *National Provincial Bank* v. *Jackson*, 33 Ch. D. at p. 11.

But in my opinion the sealing of a document with a wafer is a very different thing to sealing with the seal of the Court or of an incorporated or chartered company.

In olden times a seal probably was quite sufficient in itself to identify the persons whose seal it was—and the seal was far more important than the signature or mark of the sealer. John sealed Magna Charta, he did not sign it, and the sealing was attested by the seals, not the signatures of the Barons. The modern wafer or other similar device does not identify and its presence on a document is proof that the maker of the document did an act purporting to be sealing and is merely evidence that the maker intended the document to be a deed.

But by no stretch of imagination can a bare wafer or a rubber stamp (L.S.) be taken to be the seal of the Court. The seal of the Court is prescribed by s. 47 of the Courts Ordinance.

I do not know what (L.S.) would convey to an Indian moneylender. In any case *Locus Sigilli* is the negative of a seal: it indicates the place of a seal on some other document; or the

place where the seal is to be put. *In re The Court Bureau*, (1891) W.N. 9 has no application because here the Court has a seal.

Then Mr. Laycock argued that if the seal of the Court should have been on the served copy, its omission is a formal defect which does not invalidate the proceedings and which is curable under s. 128 of the Bankruptcy Ordinance and under Bankruptcy r. 287.

I have not much sympathy with technical objections in matters of procedure but the omission of the seal of the Court is no more a formal defect than is the omission of the signature or mark of a testator on a will.

As I have said before, the seal of the Supreme Court gives authenticity to the document. Without it there is nothing to indicate that it has been issued by any competent authority. True, this notice is signed by the Registrar, but signatures are often illegible and occasionally forged.

A bankruptcy notice is always treated very strictly, being the very foundation of proceedings to alter a man's status. *In re Collier*, 8 Moo. B.R. at 83-4. A bankruptcy notice is not an effective notice until it is sealed any more than a deed is an effective deed before it is sealed.

In re Marsden, 6 Ban. 8 Co. Wdg. C. 189 relied on by Mr. Laycock was a case of a bankruptcy petition, not of a bankruptcy notice.

The petition began "We D. H. Sellers & Sons Ltd. whose registered office is situate.....by George Albert Lister our secretary duly authorised under the seal of the Company to present and prosecute this petition on our behalf" etc. The alleged irregularity was that it was signed "G. A. Lister." The Court doubted whether there was any defect or irregularity but considered that if there was it was cured by s. 147 of the English Act.

Mr. Eber argued that he was not bound to obey the document which was served upon him as it was a nullity. *Daubrey* v. *Shuttleworth*, 1 Ex. 53.

I think he is right. If such a notice were served on a person familiar with the bankruptcy rules could he be blamed for thinking that a practical joke or an attempt to intimidate was being perpetrated? In *In re Low*, (1895) 1 Q.B. 734 Lopes, L.J. drew attention to the "wide distinction between defects in a notice which are material, and mere irregularities which cannot deceive the debtor."

I am not satisfied that the non-sealing was an irregularity which could not deceive, and I think that I cannot take into consideration the extraneous circumstances of the superfluous shewing of the sealed copy to the debtor even if the debtor's attention had been particularly drawn to the seal.

A bankruptcy notice founded on two judgment debts was held to be bad in *In re O.C.S. (A Debtor)*, (1904) 2 K.B. 161. The Court refused to allow the notice to be amended. A miscalculation by £1.5.6. in a notice claiming £984.7.1. was held to be bad in *In re A Debtor*, (1908) 2 K.B. 685; and a notice claiming £77 5.0. which was actually owed by the debtor was held to be bad because £5.5.0. out of the £77.5.0. was incurred before the Law Reform (Married Women & Tortfeasors) Act 1935 came into force and therefore could not be enforced in bankruptcy. *In re A Debtor*, (No. 21 of 1937) (1938) 2 A.E.R. 824.

In *re George Tindall*, 6 Deg. M. & G. 741 non-compliance with a summons akin to a bankruptcy notice was held not to be an act of bankruptcy because the commissioner's signature was not copied on the copy of the summons served on the debtor, though the original signed by the commissioner was shewn to him. The omission of the signature was held to be a material defect:

> "Without this signature the original document I believe would be no summons, and consequently the document served was a copy of something which as I believe was not a summons."

per Knight Bruce, L.J.

The present case is stronger. What has to be served is not a copy of a document with a copy of a signature but a document bearing the seal of the Court.

In my opinion the omission of the seal is not a mere formality; without it the bankruptcy notice is bad. Consequently, the act of bankruptcy alleged is not an act of bankruptcy and the petition must be dismissed.

Petition dismissed.

Solicitors for petitioning creditor—*Braddell Brothers.*

Solicitors for debtor—*Chan & Eber.*

[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C.J.

June 8, 1938.

REX v. A. MUNDELL (m.w.)

[SINGAPORE SPECIAL CASE No. 6 of 1938]

Traction Engines and Motor Cars Ordinance (Cap. 214), s. 16—Traction Engines and Motor Cars rules made by the Governor in Council—Ultra vires.

Rule 30(2) of the rules made by the Governor in Council under the Traction Engines and Motor Cars Ordinance* contained in Gazette Notification 2606 dated 28th December 1928 is *ultra vires* in so far as it directs the renewal of a licence to be antedated to the date of expiry of the old licence contrary to s. 5, sub-s. 4 of the Traction Engines and Motor Cars Ordinance.

CASE STATED.

Howe, Crown Counsel for the Crown.

Seth, for the respondent.

*[The rules above referred to were made under Ordinance No. 129 (Traction Engines and Motor Cars) but for the sake of convenience the Ordinance is herein referred to as the Traction Engines and Motor Cars Ordinance (Cap. 214)—Ed.]